

November 19, 2020

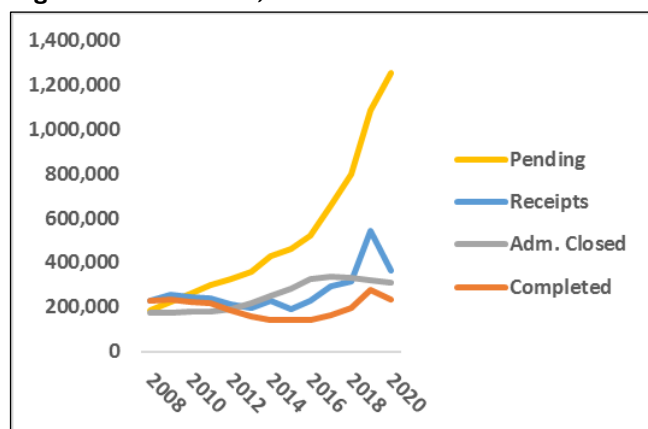
Pending Cases in U.S. Immigration Courts, FY2008-FY2020

Immigration court proceedings are adjudicated by the Executive Office for Immigration Review (EOIR), an agency within the Department of Justice (DOJ). They commence when the Department of Homeland Security (DHS) files a Form I-862 Notice to Appear (NTA) with the immigration court, thereby initiating removal proceedings against foreign nationals. Immigration Judges (IJs) then determine whether these individuals are removable or eligible for relief from removal (e.g., asylum).

Since FY2008, the number of I-862 cases pending in immigration courts has increased about six-fold. In FY2020, pending cases reached an all-time high of more than 1.2 million (**Figure 1**).

In addition to those pending cases, 310,627 other cases were administratively closed in FY2020. Administrative closure is a docket management practice that allows IJs to close cases temporarily, typically to prioritize cases that are enforcement priorities. Administratively closed cases are removed from the active court docket. This practice allows individuals the opportunity to have their applications for immigration relief resolved by other immigration agencies.

Figure 1. I-862 Cases, FY2008-FY2020



Source: EOIR Workload and Adjudication Statistics.

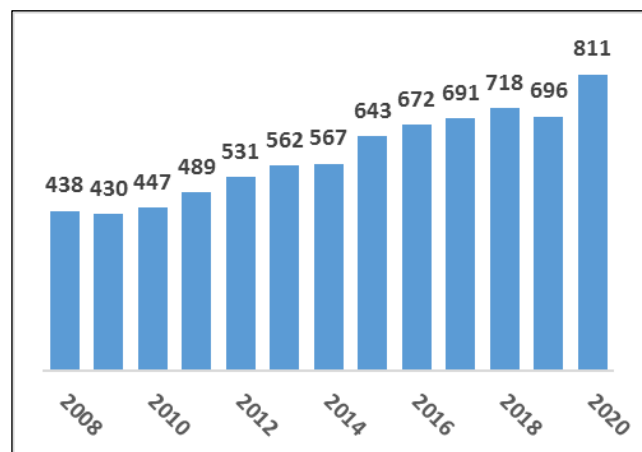
Wait Times for Pending Cases

The backlog of cases has extended wait times for case completions. In FY2008, the average wait time for removal cases was 438 days. By FY2020, average wait times exceeded 800 days (**Figure 2**). Average wait refers to the number of days individuals in proceedings have already waited—not the total time they will actually wait to have their cases completed.

EOIR guidance explicitly designates detained individuals' removal cases as priorities for completion. Detained cases, therefore, have shorter completion times than non-detained cases. According to EOIR, in FY2019, the median case

completion time (length of time before cases were resolved) for detained individuals was 46 days.

Figure 2. Average Days Pending, All Cases, FY2008-FY2020

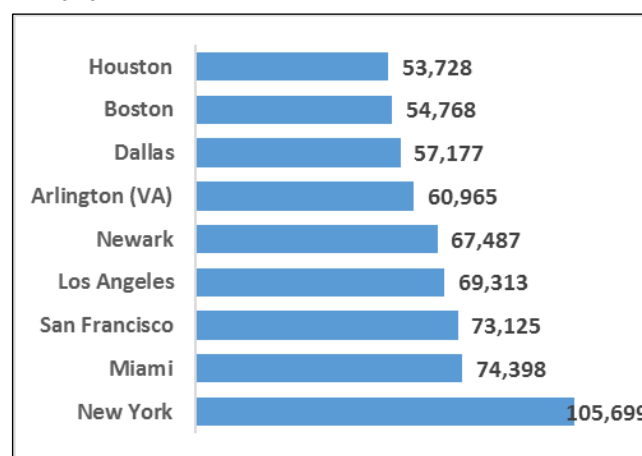


Source: Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

Immigration Courts

There are 67 immigration courts nationwide, and some bear a disproportionate share of pending cases. Nine courts each have more than 50,000 pending cases; together, they are responsible for nearly 50% of FY2020 pending cases.

Figure 3. Courts with 50,000 or More Pending Cases, FY2020



Source: Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

Immigration Judges and EOIR Responses to the Backlog

For several years, some observers have attributed the backlog to a shortage of IJs—particularly after a DOJ hiring

freeze from FY2011 to FY2014, when the number of IJs decreased from 273 to 249. More recently, EOIR has increased hiring to address the backlog and replace IJs who have departed. In FY2016, the agency employed 289 IJs. Currently, it employs 520.

Nevertheless, IJ caseloads remain considerably greater than they were a decade ago. Moreover, caseloads are not evenly distributed between IJs, leaving some with much larger dockets than others. Caseloads tend to be lower in courts that adjudicate detained individuals' cases to ensure more expeditious hearings. IJs also contend that they lack adequate support staff to effectively manage their dockets.

EOIR and DOJ have also implemented policies to maximize IJs' and courts' capacity and increase case completions. However, some IJs, attorneys, and advocates claim these strategies increase the backlog, threaten judicial independence, or raise due process concerns.

- In 2018, a decision by then-Attorney General Sessions restricted IJs' ability to administratively close cases. EOIR subsequently proposed a federal regulation to end administrative closure in 2020. DOJ claims that administrative closure exacerbates the backlog of immigration cases. Proponents of administrative closure argue that removing administrative closure would add even more cases to an already overburdened system.
- In 2018, DOJ issued new quotas to IJs that require them to complete at least 700 cases annually. The quotas, intended to reduce the backlog, have raised concerns about judicial independence and due process.
- In 2019, EOIR issued a "No Dark Courtrooms" memorandum requiring that all blocks of available immigration court time be used each day in order to more effectively utilize its resources. The National Association of Immigration Judges has argued that the policy deters judges from managing their dockets and has expanded the backlog because of last-minute location changes resulting from the new policy.
- EOIR has increased its use of video teleconference (VTC) systems to conduct more Merits Hearings (where the respondent and DHS present arguments and evidence regarding applications for immigration relief). In FY2020, EOIR conducted 282,232 VTC hearings (about 19% of all hearings). Advocates and attorneys have raised due process concerns with VTC, arguing that the technology impedes communication between clients and lawyers and does not adequately convey nonverbal cues that can alter an IJ's assessment of an individual's demeanor and credibility.

Additional Factors Contributing to the Backlog

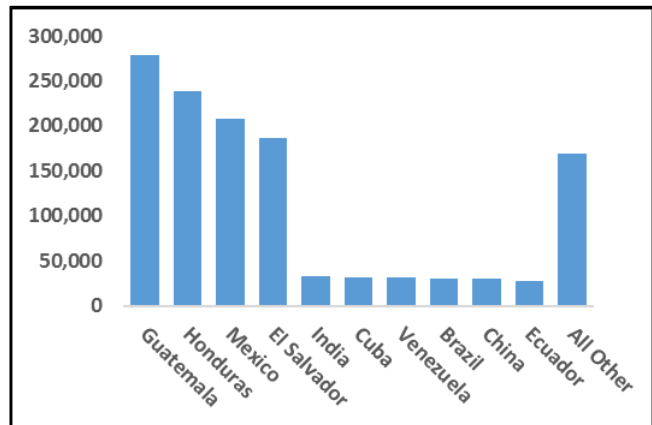
In addition to IJ staffing needs, several factors external to EOIR have been associated with increasing pending cases.

Central American Arrivals

Since 2012, there has been a considerable increase in Central American migrants arriving at the U.S.-Mexico border, including families and children seeking asylum.

Migrants from Guatemala, Honduras, and El Salvador account for a growing share of pending cases in immigration courts (**Figure 4**).

Figure 4. Pending Cases by Country of Origin, FY2020



Source: Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

Enforcement Priorities

Interior immigration enforcement expanded during the end of the George W. Bush Administration and early years of the Obama Administration, leading to more NTA issuances and immigration court adjudications. The Obama Administration subsequently prioritized removals of immigrants with criminal records and encouraged judges to use administrative closure to clear out low-priority cases.

The Trump Administration broadened enforcement priorities, increasing the number of removal orders for unauthorized foreign nationals without criminal histories, while also reducing IJs' discretion to close cases administratively. These policies contributed to the increased number of pending cases.

Postponed Hearings

Hearing cancellations due to external factors have also exacerbated the backlog. During the 2018 partial government shutdown, an estimated 50,000-80,000 immigration court hearings were cancelled and later rescheduled. More recently, hearing postponements related to the COVID-19 pandemic have contributed to the backlog. On March 18, 2020, EOIR postponed hearings nationwide for cases involving non-detained individuals. The agency resumed these hearings in some courts in June, but others remain postponed through December 18, 2020. In addition, courts that have resumed hearings have closed periodically for cleaning due to potential COVID-19 exposures. According to an analysis by the Transactional Records Access Clearinghouse (TRAC), a research center at Syracuse University, between March (when the courts partially shut down) and August 2020, pending cases increased 11% and wait times increased 6%.

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